

FILED BY CLERK

FEB -2 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT A. MOORE,)	
)	2 CA-CV 2011-0058
Petitioner/Appellant,)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
BONNIE J. MOORE,)	Rule 28, Rules of Civil
)	Appellate Procedure
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. DO2009302

Honorable Anna M. Montoya-Paez, Judge

DISMISSED

Karp & Weiss, P.C.
By Jennifer A. Manzi

Tucson
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Aaron & Rogers, P.C.
By Michael Aaron

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B R A M M E R, Judge.

¶1 Appellant Robert Moore appeals from the trial court's March 16, 2011 under advisement ruling dividing the parties' property and debts and awarding appellee

Bonnie Moore spousal maintenance. Because we do not have jurisdiction, we dismiss the appeal.

Factual and Procedural Background

¶2 Robert filed a petition for dissolution of marriage in December 2009. The trial court held two days of hearings on the petition and issued an under advisement ruling dividing the parties' property and debts and awarding Bonnie spousal maintenance. The ruling ordered Bonnie to prepare a decree of dissolution and stated the court would "grant [Bonnie] a portion of her attorney fees associated with the dissolution action because of the inequities of their earning capacity." Although Robert filed a notice of appeal purporting to appeal from the under advisement ruling, no final decree of dissolution setting the amount of attorney fees yet had been entered.

Discussion

¶3 We have an independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). And "[w]herever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will apply." Ariz. R. Fam. Law P. 1 committee cmt.

¶4 Section 12-2101(A)(1), A.R.S., vests jurisdiction in this court “[f]rom a final judgment.” Generally we do not have jurisdiction over an appeal unless a judgment has disposed of all parties and claims. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). If an order does not adjudicate all claims between all parties it is not appealable unless it satisfies the requirements of Rule 78(B), Ariz. R. Fam. Law P. See *Musa*, 130 Ariz. at 313, 636 P.2d at 91 (interpreting Rule 54(b), Ariz. R. Civ. P.). Compare Ariz. R. Fam. Law P. 78(B), with Ariz. R. Civ. P. 54(b). Rule 78(B) only applies if the trial court enters a final judgment “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”

¶5 Except as provided in Rule 78(B), a judgment is not final until claims for attorney fees are resolved. See *Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 36, 119 P.3d 477, 484-85 (App. 2005). Unless only ministerial acts remain to be performed, “a notice of appeal filed in the absence of a final judgment . . . is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39, 132 P.3d 1187, 1195 (2006); see also Ariz. R. Fam. Law P. 78(B) (decision adjudicating fewer than all claims subject to revision).

¶6 As we previously noted, in its March 16 under advisement ruling the trial court ordered Bonnie to “prepare the Decree of Dissolution” and file an affidavit of attorney fees and costs. Although the court stated it would award Bonnie “a portion of her attorney fees,” it had not yet determined the amount of the award. No final decree of

dissolution was filed, and the court did not enter a determination pursuant to Rule 78(B).¹ Thus, the March 16 ruling was not a final appealable judgment. And, because substantive issues remained to be resolved, the notice of appeal Robert filed was a nullity. *See Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626. Therefore, we do not have jurisdiction over the appeal. *See* § 12-2101(A)(1); *Musa*, 130 Ariz. at 312, 636 P.2d at 90.

Conclusion

¶7 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

¹Even if the trial court had filed an order pursuant to Rule 78(B), we would not have had jurisdiction over the attorney fee portion of Robert's appeal unless the judgment had included a final attorney fee award.